



ANNUAL REPORT 2009

Table of Contents

<i>Chapter</i>		<i>Page</i>
	<i>Letter to Minister from Commissioner</i>	<i>3</i>
	<i>Letter to Commissioner from Chief Bureau Officer</i>	<i>5</i>
	<i>Schedule of Chart and Tables</i>	<i>8</i>
<i>1</i>	<i>Introduction</i>	<i>9</i>
<i>2</i>	<i>Personnel</i>	<i>10</i>
<i>3</i>	<i>Finance</i>	<i>12</i>
<i>4</i>	<i>Actions by the Bureau</i>	<i>13</i>
	<i>- Proceeds of Crime Actions</i>	<i>14</i>
	<i>- Receivership Accounts</i>	<i>17</i>
	<i>- Revenue Actions</i>	<i>18</i>
	<i>- Social Welfare Actions</i>	<i>22</i>
	<i>- Other Investigations</i>	<i>24</i>
<i>5</i>	<i>Litigation and Case Law</i>	<i>27</i>
	<i>- General</i>	<i>27</i>
	<i>- Receiverships</i>	<i>28</i>
	<i>- Significant Cases</i>	<i>28</i>
	<i>- Other issues</i>	<i>32</i>
<i>6</i>	<i>International Developments</i>	<i>33</i>
	<i>- Assets Recovery Offices (AROs)</i>	<i>33</i>
	<i>- Camden Assets Recovery Inter- agency Network (CARIN)</i>	<i>34</i>
	<i>- Co-operation with the Authorities in the United Kingdom</i>	<i>35</i>
<i>7</i>	<i>Conclusion</i>	<i>37</i>
	<i>Appendices</i>	<i>40</i>

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Mr. Dermot Ahern, TD
Minister for Justice & Law Reform
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Dear Minister

In accordance with the terms of Section 21 of the Criminal Assets Bureau Act 1996 I am pleased to present to you the 2009 Annual Report of the Criminal Assets Bureau.

In circumstances where organised crime continues to impose a serious threat to our communities, the Criminal Assets Bureau has continued to demonstrate the effectiveness of the multi-agency, multi-disciplinary and partnership approach in targeting the proceeds of such criminal conduct. The continued development and recent expansion of the Divisional Assets Profiler Programme, together with the Bureau's policy of targeting the lower valued assets of up and coming mid-ranking criminals, ensure a more visible and effective presence in local communities.

International co-operation, both with agencies abroad and within the framework of CARIN and the European Commission, continues to generate results in relation to identification, targeting and deprivation of criminal assets, which have migrated to other jurisdictions. The Bureau is Ireland's representative at the platform of Asset Recovery Offices which meets in Brussels, where, in conjunction with the European

Commission, it continues to promote the benefits of the multi-agency model and the non-conviction based forfeiture regime.

As the use and extent of the receivership remedy expands, the Bureau continues to develop and implement more systematic and robust audit procedures in relation to all receiverships.

Following consultation with the Office of the Attorney General a committee has now been established, under the umbrella of your department, to review the existing legislation and developing precedent and consider what, if any, legislative reform should be made.

The economic downturn has had a significant effect on the external environment in which the Bureau operates. The Bureau has, where necessary, adapted its methods and tactics in such a manner as to ensure it continues to achieve its objectives and functions effectively.

Since its inception in 1996 the Bureau has continued to discharge its statutory duties in an efficient, effective and progressive manner. As can be seen from this report, the Bureau plays a significant role in the fight against organised crime.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M F Murphy', is written over a horizontal line.

**M F MURPHY
COMMISSIONER OF
AN GARDA SÍOCHÁNA**

June 2010

Criminal Assets Bureau

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June, 2010

Commissioner
An Garda Síochána
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It is my pleasure to present to you the 14th Annual Report of the Criminal Assets Bureau for the calendar year 2009. This report is submitted for presentation to the Minister for Justice and Law Reform, pursuant to the provisions of Section 21 of the Criminal Assets Bureau Act, 1996.

Multi-agency effectiveness requires that staffing levels are maintained from each agency and I am pleased to report that this is the case for 2009. I would like to acknowledge the contribution of all the parent agencies in this regard. In addition, the increased demand required to service the Information Technology (I.T.) Strategy of the Bureau was met by the additional allocation of one (1) specialist sanctioned by the Department of Justice and Law Reform.

This year saw the Bureau continue to pursue its statutory remit. Eighteen (18) new Proceeds of Crime cases were brought before the High Court. The majority of these actions were taken against persons suspected of drug trafficking. Other criminal conduct included prostitution, theft offences and the illicit trade in counterfeit goods. The total sum forwarded to the Minister for Finance for the benefit of the Central Exchequer, utilising Proceeds of Crime, Revenue and Social Welfare legislation exceeded €6.6 million.

During the course of 2009 the Bureau concluded sixteen (16) cases using the provisions of Section 4 and 4A of the Proceeds of Crime Act, netting the Exchequer approximately €1.4 million.

The Bureau continued to assist in the development of the Divisional Assets Profilers programme with an additional twenty-six (26) profilers being trained throughout 2009.

The Bureau continues to liaise and work in close co-operation with all the main law enforcement agencies worldwide, with a particular focus on the identification and deprivation of assets held by Irish criminals abroad, which have been generated through the proceeds of criminal conduct occasioned in the State.

Following an E.U. Council Framework Decision in 2007 stipulating that Asset Recovery Offices (AROs) be established in all Member States, there are now twenty-seven (27) designated AROs, in twenty-two (22) Member States. The Criminal Assets Bureau is the designated ARO for Ireland. The designation of AROs for the five (5) remaining States is pending.

I am happy to report that the Bureau continues to enjoy excellent support from members of the public. In general, the Bureau continues to enjoy good working relationships with the Financial Institutions, Accountancy Bodies and the Incorporated Law Society. In addition to its focus on serious organised criminals operating at national and international levels, the Bureau has as a core priority the support of local communities and utilises the Divisional Profiler Programme fully in this regard.

I wish to acknowledge with gratitude the support and cooperation afforded to the Bureau throughout the year by An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Law Reform, the Department of Finance, the Office of the Attorney General and the Office of the Director of Public Prosecutions. I would also like to particularly acknowledge the expertise and commitment of the solicitors and staff allocated by the

Schedule of Chart and Tables

		<i>Page</i>
<i>Chart 1</i>	<i>Bureau Officers and Staff</i>	11
<i>Table 1</i>	<i>Accounts for the period 1st January 2009 to 31st December 2009</i>	12
<i>Table 2</i>	<i>Number of Warrants and Orders</i>	13
<i>Table 3</i>	<i>Orders obtained under the Proceeds of Crime Act 1996 & 2005</i>	16
<i>Table 4</i>	<i>Statement of Receivership Accounts</i>	17
<i>Table 5</i>	<i>Tax charged by assessment</i>	20
<i>Table 6</i>	<i>Tax and interest demanded</i>	20
<i>Table 7</i>	<i>Tax and interest collected</i>	20
<i>Table 8</i>	<i>High Court proceedings instituted for recovery of tax and interest</i>	21
<i>Table 9</i>	<i>Tax and Interest recovered using Revenue Powers of Attachment & Sheriff</i>	21
<i>Table 10</i>	<i>Outcome of appeals at Appeal Commissioner stage</i>	21
<i>Table 11</i>	<i>Outcome of appeals refused by Bureau</i>	21
<i>Table 12</i>	<i>Outcome of Circuit Court appeals</i>	22
<i>Table 13</i>	<i>Social Welfare savings by scheme type</i>	22
<i>Table 14</i>	<i>Social Welfare overpayments by scheme type</i>	23
<i>Table 15</i>	<i>Social Welfare recovery of monies by scheme type</i>	23

Criminal Assets Bureau

Annual Report

2009

Chapter 1

1 INTRODUCTION

- 1.1 *This is the fourteenth annual report of the activities of the Criminal Assets Bureau (hereinafter referred to as the Bureau) and covers the period from 1st January 2009 to 31st December 2009 inclusive.*

- 1.2 *The Bureau was established in 1996 by the Criminal Assets Bureau Act 1996 (hereinafter referred to as “the Act”). The Act was amended by the Proceeds of Crime (Amendment) Act 2005. Sections 4 and 5 of the Act set out the statutory objectives and functions of the Bureau and these sections are attached at Appendix 1 of this report.*

- 1.3 *This report is prepared pursuant to Section 21 of the Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice and Law Reform, of its activities during the year.*

Chapter 2

2 PERSONNEL

- 2.1 *The Bureau is staffed by officers from An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Law Reform and the Bureau Legal Officer.*
- 2.2 *During 2009 Detective Chief Superintendent Patrick G. Byrne was appointed Chief Bureau Officer, replacing John O'Mahoney who was promoted to the rank of Assistant Commissioner.*
- 2.3 *Chief State Solicitor assigns one Principal Solicitor, one State Solicitor, two Legal Executives and two Clerical Officers to provide the necessary legal support services to the Bureau. Following the resignation of the State Solicitor so assigned to take up a position abroad, a vacancy currently exists in this area. The Bureau continues to press for a replacement.*
- 2.4 *During 2009 the Department of Justice and Law Reform sanctioned the appointment of an additional Higher Executive Officer to support the I.T. Unit. This was a welcome and much needed additional resource for the Bureau.*
- 2.5 *The total number of staff at the Bureau as of 31st December 2009 was 69 and the breakdown of this number is shown in Chart 1 overleaf:*

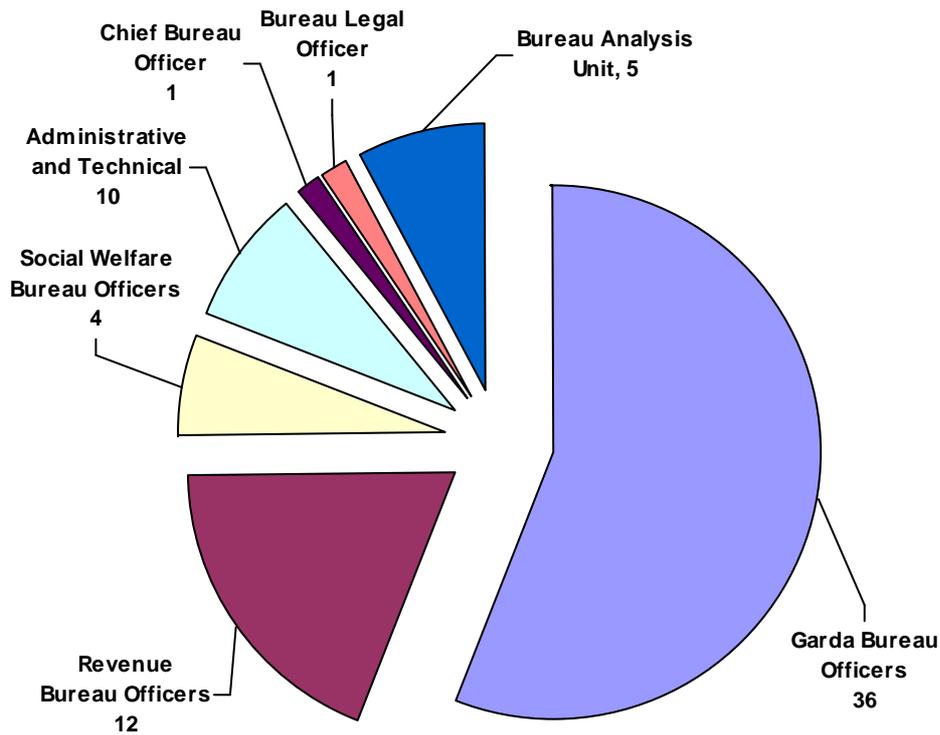


Chart 1:- Bureau Officers and Staff

2.5 *The Divisional Criminal Assets Profiler Programme continued throughout 2009 with the training of twenty-six (26) additional profilers, twenty-four (24) of which were Gardaí and two (2) Customs Officers. This increased the number of Assets Profilers to one hundred and fifteen (115). These profilers continued to assist the Bureau in pursuing its statutory remit. A further expansion and review of this area will take place in 2010.*

Chapter 3

3 FINANCE

- 3.1 *During the course of the year the Bureau expended monies provided to it through the Oireachtas by the Minister for Justice and Law Reform in order to carry out its statutory functions and to achieve its statutory objectives.*
- 3.2 *The Bureau expended €6.877m as broken down in the following Table 1.*

Table 1:- Accounts for the period 1st January 2009 – 31st December 2009

Monies provided by the Oireachtas		€000	€000
Expenditure	Pay	5,743	
	Non-Pay	1,134	
	Total	6,877	6,877

- 3.3 *All such amounts are audited by the Comptroller and Auditor General, as is provided for by Statute.*

Chapter 4

4 ACTIONS BY THE BUREAU

- 4.1 *During the course of the year the Bureau undertook a number of actions in pursuit of its statutory objectives and in execution of its statutory functions in targeting the proceeds of criminal conduct. The information and statistics furnished in this report relate to cases in which the Bureau took action, through the courts or otherwise, in pursuit of this statutory remit.*
- 4.2 *These actions covered a wide range of Garda, Revenue and Social Welfare activities and also included other actions specific to the work of the Bureau.*
- 4.3 *Court applications were made by the Bureau, pursuant to Sections 14 and 14A of the Act, to obtain Search Warrants and Production Orders which were used by the Bureau to uplift evidence in carrying out its investigations. The numbers of Warrants and Orders obtained are set out in Table 2 below.*

Table 2:- Number of Warrants and Orders

Description	Number
Search Warrants under Section 14 of the Act	247
Orders to make material available under Section 14A of the Act	266

4.4 *A substantial part of the work of the Bureau is by way of proceedings in the High Court. During 2009 the Bureau initiated a number of actions under the Proceeds of Crime Act 1996 and 2005 (hereinafter referred to as the PoC Act) and other legislation and advanced other actions which had been initiated in the course of previous years.*

Proceeds of Crime Actions

4.5 *The Chief Bureau Officer, or the Bureau in its own name, may make an application to the High Court under Section 2 of the PoC Act seeking an interim Order, which prohibits dealing with property if the Court is satisfied, on the civil standard of proof, that such property is the proceeds of criminal conduct and which has a value of not less than € 13,000.*

4.6 *Subsequent to a Section 2 Order being granted, the Bureau must, to keep the prohibition in place, apply within twenty-one (21) days for an Order under Section 3 of the same Act. If such an application is successful the High Court makes an Interlocutory Order, which in effect freezes the property until further notice, unless the court is satisfied that all or part of the property is not the proceeds of criminal conduct.*

4.7 *A Section 3 application may be made even where no Section 2 Order is in place or has been sought. An application for an Order under Section 2 is only made where there is an immediate concern that property may be dissipated or where a receiver needs to be appointed to preserve its value.*

- 4.8 *Once a Section 2 or Section 3 Order is in place it is open to any person to seek to vary or set aside such freezing Order (Section 2(3) or Section 3(3) of the Act), if that person can satisfy the court that they have a legitimate right to the property and/or said property is not the proceeds of criminal conduct.*
- 4.9 *A receiver may be appointed by the court under Section 7 of the same Act, either to preserve the value of or dispose of property which is already frozen under Section 2 or Section 3 Orders. In 2009 the Bureau obtained twenty (20) Receivership Orders and in all cases the Receiver appointed by the court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts, jewellery, and motor vehicles. In some Receivership cases the High Court made Orders for possession and sale by the Receiver. A Receivership Order cannot be made unless a Section 2 or Section 3 Order is already in place.*
- 4.10 *Section 4 of the PoC Act provides for the making of 'Disposal Orders' whereby the High Court may make an order transferring assets, which have already been frozen under a Section 3 Order for at least seven years, to the Minister for Finance for the benefit of the Central Fund.*
- 4.11 *The Proceeds of Crime (Amendment) Act 2005 made provision for the obtaining of a 'Section 4A consent disposal order' whereby the High Court may make a similar Order to that of a Section 4 Order on consent, in cases where the Section 3 Order is in existence for less than seven years.*

4.12 There were eighteen (18) new cases taken under the PoC Act. Seventeen (17) of these cases were by way of Section 2 Orders and one (1) was by way of a Section 3 Order. The number of Orders obtained under Sections 2, 3(1), 3(3), 4, 4A, and 7 of the Proceeds of Crime Act 1996 and 2005, and their value, are shown in Table 3.

Table 3:- Orders obtained under the Proceeds of Crime Act 1996 & 2005

Description	Number of Respondents	Number of Orders	Amount €	Amount STG £	Amount US Dollars
Interim Orders under Section 2	29	17	11,012,543.00	20,630.00	760,051.86
Interlocutory Orders under Section 3(1)	28	16	3,763,250.87	-	-
Variation Orders under Section 3(3)	3	2	103,500	-	-
Disposal Orders under Section 4	14	7	870,087.67	-	-
Consent Disposal Orders under Section 4A	11	9	393,301.02	-	-
Receivership Orders under Section 7	28	20	3,418,331.84	13,500.00	696,875.60

Some figures include sums converted from other currencies

4.13 Arising from PoC actions, a total of €1,421,332.11 was paid over to the Minister for Finance during 2009. These funds, related to the collection of Section 4 and Section 4A Orders during the course of

the year. In addition, two (2) BMW motor vehicles, both of which had been adapted to allow for personal bullet proofing (estimated to have been originally purchased for a figure in excess of €350,000), were directed, pursuant to Section 4A, to be assigned to the Minister for Finance. Due to the specialised nature of the vehicles, on the Minister's direction, both cars were assigned to the Commissioner, An Garda Síochána, for use of the Force.

Receivership Accounts

4.14 The following Table 4 sets out the opening balance as of 1st January 2009, the activity during the year and the closing balance as of 31st December 2009 in receivership accounts held at the Bureau.

Table 4:- Statement of Receivership Accounts

	€	STG £	US\$
Opening Balance Receivership Accounts 01/01/2009	8,007,235	971,817	93,264
Amounts realised, inclusive of interest and operational advances	1,788,269	25,303	698,080
Payments out, inclusive of payments to Exchequer and Operational Receivership Expenditure	1,910,064	158,309	76
Closing Balance Receivership Accounts 31/12/2009	7,885,440	838,811	791,268

Revenue Actions

- 4.15 *The Bureau is empowered under the Act to apply, where appropriate, the relevant powers of the Taxes Acts to the profits or gains derived from criminal conduct and suspected criminal conduct. The application of these powers enables the Bureau to carry out its statutory remit and is an effective means of depriving those engaged in criminal conduct and suspected criminal conduct, of such profits or gains.*
- 4.16 *The provisions of the Disclosure of Information for Taxation and Other Purposes Act 1996 were used extensively during the year in providing for the transfer of information between the Revenue Commissioners and the Bureau.*
- 4.17 *Following investigations into the financial affairs of those engaged in criminal conduct, or suspected criminal conduct, the Bureau applied the provisions of the Taxes Acts to a number of persons. A number of investigations were concluded by agreement providing for the payment of tax, interest and penalties.*
- 4.18 *During 2009 Revenue Bureau Officers raised assessments on twenty-one (21) individuals and three (3) corporate entities. Persons have an entitlement to make an appeal to the Appeal Commissioners where they are aggrieved by an assessment. During the year, thirteen (13) individuals (five (5) of whom were assessed to tax in the previous year) invoked this right. Seven (7) individuals had their appeal applications refused by the Bureau due*

to failure to comply with the relevant provisions of the Taxes Acts. Three (3) of these individuals appealed the refusal to Appeal Commissioners. In all three (3) cases the Appeal Commissioners upheld the Bureau's decision to refuse the appeal.

4.19 At 1st January 2009 there were five (5) cases at the Appeal Commissioners stage. During the year the Appeal Commissioners determined the tax liabilities of four (4) cases by confirming the assessments made by the Bureau, (two (2) of these determinations were challenged by way of appeal to the Circuit Court), three (3) individuals withdrew their appeals prior to hearing by the Appeal Commissioner. At 31st December 2009 there were five (5) cases at various stages in the appeals process.

4.20 At the 1st January 2009 there were two (2) cases at the Circuit Court stage , two (2) individuals appealed the determination of the Appeal Commissioners to the Circuit Court and two (2) individuals withdrew their appeals before the Circuit Court Judge. At the 31st December 2009 two (2) cases await hearing by the Circuit Court.

4.21 In one (1) case, a High Court Judge held that a defendant had failed to identify any bona fide defence against a claim for taxes and interest due to the Criminal Assets Bureau in the sum of €3,313,990 and accordingly dismissed the appeal.

4.22 The Bureau applied the enforcement procedures of the Taxes Acts (including the use of Attachment Orders and Sheriff) against the financial assets of tax defaulters and instituted High Court recovery proceedings in the pursuit of taxes due.

4.23 The following Tables 5 to 12 inclusive give details of Revenue actions by the Bureau, including the amounts of taxes charged by assessment, demanded and collected or otherwise recovered and cases at the Appeal Commissioner and Circuit Court stage.

Table 5: Tax charged by assessment

Description	€
Income Tax	11,271,944.93
Value Added Tax	2,573,504.64
Capital Gains Tax	1,026,293.00
Corporation Tax	1,276,485.00
PAYE/PRSI	1,695,612.00
Vehicle Registration Tax	470,494.00
TOTAL	18,314,333.57

Table 6: Tax and interest demanded

Description	€
Income Tax	14,746,516.76
Capital Gains Tax	48,823.36
Value Added Tax	549,170.12
Corporation Tax	8,782,873.07
Vehicle Registration Tax	359,715.28
TOTAL	24,487,098.59

Table 7: Tax and interest collected

Description	€
Income Tax	2,616,225.03
Capital Gains Tax	160,000.00
Value Added Tax	459,076.00
Corporation Tax	1,650,076.78
PAYE/PRSI	69,984.00
Stamp Duty	14,853.19
Vehicle Registration Tax	130,279.72
TOTAL	5,100,494.72

Table 8:- High Court proceedings instituted for recovery of tax and interest

	No. of cases	€
Total	6	9,670,283.73

Table 9:-Tax and interest recovered using Powers of Attachment and Sheriff

	No. of cases	€
Total	9	156,492.14

Table 10:-Outcome of Appeals at Appeal Commissioner Stage

Description	No. of cases
Number of cases at appeal stage at 1/1/2009	5
Appeals properly invoked in 2009	7
Appeals determined in favour of Bureau	4
Appeals withdrawn by individuals	3
No. of cases at appeal stage 31/12/2009	5

Table 11:-Outcome of Appeals refused by Bureau

Description	No. of cases
Number of cases on hand at 1/1/2009	1
Appeals refused in 2009	7
Refusals appealed to Appeal Commissioner	3
Bureau decision upheld by Appeal Commissioner	3
No. of cases on hand at 31/12/2009	0

Table 12:-Outcome of Circuit Court Appeals

Description	No. of cases
Number of cases on hand at 1/1/2009	2
Appeals to Circuit Court	2
Appeals withdrawn by individuals	2
No. of cases on hand at 31/12/2009	2

Social Welfare Actions

4.24 The Bureau also takes actions under the Social Welfare Acts in relation to persons engaged in criminal conduct. Arising from investigations by Bureau Officers, who are also officers of the Minister for Social Protection, a number of Social Welfare payments were terminated, resulting in savings to the Exchequer as set out at Table 13 below.

Table 13:- Social Welfare savings by scheme type

Scheme Type	€
Jobseeker's Allowance	240,781
One Parent Family Payment	354,742
Disability Allowance	124,902
Total	720,425

4.25 There were nineteen (19) appeals lodged with the Chief Appeals Officer against decisions made by Bureau Officers. The Chief Appeals Officer certified that the ordinary appeals procedure was inadequate to secure the effective processing of these appeals and directed that the appellants submit their appeals to the Circuit Civil Court. Four (4) appeals were withdrawn, two (2) appeals were rejected by the Appeals Office, six (6) appellants did not proceed

with their appeals - not lodging them in the Circuit Court as directed by the Chief Appeals Officer. Seven (7) of the nineteen appeals lodged were ongoing as of 31st December 2009.

4.26 Of the eleven (11) appeal cases carried over from 2008, four (4) cases were heard before the Circuit Civil Court and the decisions made by the Social Welfare Bureau Officers were upheld. In two (2) cases decisions have not been given as of 31st December 2009. The appellants in the remainder of the cases did not proceed to court and their appeals are deemed closed.

4.27 The Bureau also identified overpayments of assistance resulting from determinations, details of which are set out in Table 14 below.

Table 14:- Social Welfare overpayments by scheme type

Scheme Type	€
Jobseeker's Allowance	278,870
One Parent Family Payment	460,304
Disability Allowance	51,343
Total	790,517

4.28 The recovery of monies as per Table 15 below was effected by repayments, by instalments and by deductions, from current entitlements.

Table 15:- Social Welfare recovery of monies by scheme type

Scheme Type	€
Jobseeker's Allowance	51,226
One Parent Family Payment	101,254
Disability Allowance	4,995
State non-Contributory Pension	1,560
Carer's Allowance	1,300
Total	160,335

4.29 *In 2009 in four (4) cases, Summary Summons proceedings commenced with a view to recovering amounts overpaid and in all other cases summary summons proceedings are continuing.*

4.30 *One (1) criminal prosecution against a claimant, who continued to claim unemployment payments while working on a full time basis, was initiated in 2006. The claimant pleaded guilty before the District Court in 2007 and the case was adjourned again for sentencing until June 2009. The total debt was recovered in the case and the Probation Act was applied.*

Other Investigations

4.31 *Following a Criminal Assets Bureau investigation into corruption and an ensuing prosecution, on the 18 May 2009 Frank Dunlop pleaded guilty before the Dublin Circuit Criminal to five (5) charges of bribing councillors to vote in favour of motions to rezone lands commonly known as the Jackson Way lands in Carrickmines, Co. Dublin. He received a one (1) year concurrent sentence in respect of three (3) charges. These charges relate to the corrupt payments made by him to Councillors in 1992, contrary to Section 1 (2) of the Public Bodies Corrupt Practices Act 1889, as amended by Section 4(2) of the Prevention of Corruption Act 1916. He also received concurrent two (2) year sentences on two (2) other charges with the final six (6) months suspended. These charges relate to the corrupt payments made by him to Councillors in 1997, contrary to Section 1 (2) of the Public Bodies Corrupt Practices Act 1889, as amended by Section 4(2) of the Prevention of Corruption Act 1916 and Section 38 of the Ethics in Public Office Act 1995. Frank Dunlop was also fined €30,000 on one (1) of the charges with six (6) months to pay or six ((6) months imprisonment in default. (This fine was paid in 2009).*

- 4.32 *During the course of 2009 the Criminal Assets Bureau submitted a total of two (2) separate investigation files to the office of the Director of Public Prosecutions (DPP) for directions in respect of suspected offences contrary to Section 1078 of Taxes Consolidation Act 1997. The DPP directed charges in respect of the two (2) cases.*
- 4.33 *In respect of the two (2) cases mentioned directions to charge each individual was received from the DPP and as a result one (1) individual was charged and appeared before the Circuit Criminal Court where, following a plea of guilty to the charges, he was fined €750. The second individual was charged and has been sent forward for trial to the Circuit Criminal Court. As of the end of 2009 no date was set for the trial. This matter will be reported on in the 2010 Annual Report.*
- 4.34 *In respect of the two (2) files which were submitted to the DPP in 2008 that were awaiting his directions the DPP directed no prosecution in both cases. Both individuals, the subjects of the files, have since settled their tax affairs with the Bureau.*
- 4.35 *In respect of the file submitted to the DPP in 2008 as a result of Operation Tie, which was an investigation into VRT irregularities, the four (4) individuals charged have been served with copies of the book of evidence and sent forward to the Circuit Criminal Court for trial. One (1) of these individuals has sought a Judicial Review of the proceedings and the criminal charges are adjourned to October 2010.*

4.36 *Section 13 of the Act provides for an offence of intimidating a Bureau Officer. Arising from threats made to a Social Welfare Bureau Officer, a person was charged with such an offence on the directions of the Director of Public Prosecutions. The case has been remanded to a date in 2010 for hearing in the District Court and will be reported on in the next year's annual report.*

Chapter 5

5 LITIGATION AND CASE LAW

General

5.1 *This has been another busy year for the Bureau from a litigation point of view. Eighteen (18) new proceeds of crime cases were instigated, three (3) of which involved the correlation and presentation of a significant body of evidence. Following the statutory seven (7) year restraint period, seven (7) old cases were brought to an ultimate conclusion pursuant to Section 4 of the Act. A further nine (9) cases were concluded utilising the Consent Disposal procedure under Section 4A of the Act. The determination of sixteen (16) Proceeds of Crime Applications in the course of the year, demonstrates a decision to focus on bringing as many ongoing cases as possible to a timely and effective conclusion.*

Significant use has also been made in the course of the year of the power to appoint a receiver pursuant to Section 7 of the Act. In the course of the year Orders were made in some twenty (20) cases being brought by the Bureau. A further Order was made in the Cork Circuit Court on behalf of the Director of Public Prosecutions relating to the yacht 'Lucky Day' detained in Spain as part of Operation Cayman which resulted in the seizure of 1545 kgs. of cocaine and the arrest and imprisonment of offenders in Ireland and U.K. This was a case where the Director sought and obtained the skills and experience of the Bureau to effect a Forfeiture Order already obtained by him.

RECEIVERSHIPS

5.2 *The total number of active receiverships in which the Bureau was involved in during the course of the year was seventy-five (75). As noted in last year's Annual Report, an internal review of the receivership process was in progress, an audit committee had been established and it was proposed to commission an external audit. The internal review of all ongoing receivership files, where the current Bureau Legal Officer is appointed as receiver, was conducted in January. There afterwards in February an external Accountant was commissioned to conduct a review of receivership procedures. A report was presented which made a number of recommendations, which have been or are in the process of being implemented.*

SIGNIFICANT CASES

5.3 Criminal Assets Bureau –v- Barry and Majella O'Brien

This case was listed for hearing and heard in the course of the year. A submission was made on behalf of Mrs. O'Brien as to whether the making of a Section 3 Order, particularly in relation to a family home, would be so unjust as to amount to a violation of her rights pursuant to Article 8 of the European Convention on Human Rights. As it was an important issue which merited careful consideration by the Court, Mrs. O'Brien was assigned Legal Aid with two Counsel, to make submissions to the Court on that point. The case was heard, written submissions made and judgement is expected to be delivered in early 2010.¹

¹ At the time of writing this report judgement was delivered in favour of the Bureau. A full report on the outcome of the case will be presented in the Annual Report 2010.

5.4 **Criminal Assets Bureau –v- M: Publication**

By Statute, all applications for interim orders must be heard otherwise than in public. It is also open to the Court on the application of any Respondent to have the hearing for an Interlocutory Order heard otherwise than in public, or in the alternative to limit the publication of certain facts raised in the course of the hearing. The Bureau had a growing concern that such Orders might be granted without appropriate consideration and raised the issue early in the course of the above case. The Court, clearly of the view that the Bureau were making a principled submission which would have relevance in all cases under the Act, sought submissions and assigned a specific hearing date for the Respondent's application for an "in camera" hearing. The Bureau's submissions included the following:

- (1) Prima Facia a Section 3 Application for an Interlocutory Order from its initiation, should be heard in public.*
- (2) That while the Court has a discretion to direct that such an application may be heard otherwise than in public, such discretion should only be made in exceptional circumstances and where there is a real risk that not to make such an order would constitute a denial of justice.*
- (3) The onus is on the Respondent to satisfy the Court that such a risk exists and an order should be made.*
- (4) Any application by a Respondent that any proceedings under the Act be heard otherwise than in public should be applied for on the basis of an affidavit setting out the grounds why in his or her particular case an order is necessary to prevent the denial of justice.*

(5) Where necessary, when the case has been fully heard and determined, the question of publication of an order of the Court should be reconsidered under Section 8(4) of the Act.

The matter was heard towards the end of the year and judgement is expected to be delivered in early 2010.²

5.5 Criminal Assets Bureau –v- John McNulty: Feeney J. 14th September 2009

These proceedings constituted a claim for tax in the sum of €3.3 million plus interest. The respondent raised a number of technical points in his legal submissions, including questioning the jurisdiction of the Master of the High Court to grant summary judgment and the validity of a certificate produced pursuant to Section 966(3) of the Taxes Consolidation Act. Judgment was granted in favour of the Bureau. The following passage from the judgement gives the tenor of the judgement:

“Each of the matters which could have been proved in evidence until the contrary was proved of those facts by a Section 966(3) certificate have, in fact, been proved before this Court by averments, exhibits and admissions and do not require to be proved by certificate. The fact that such matters can be proved in evidence by a certificate does not result in a situation where the only means of proving such matters is by use of certificate. The section in this Act permits of proof by use of a certificate does not oblige proof thereby nor does it create a situation where the proof of the matters which could be covered by certificate cannot be approved by other means or admitted by the Defendant. An analysis of the facts of this case, i.e. on affidavits sworn, the document exhibited and the admissions

² At the time of writing this report judgement was delivered in favour of the Bureau. A full report on the outcome of the case will be presented in the Annual Report 2010.

made by and on behalf of the Defendant confirms that each and every one of the four matters which could be proved in evidence by a Section 966(3) certificate have, in fact, been proved to this Court. It follows that the matter raised by the Defendant concerning the absence of an effective and proved certificate under Section 966(3) is of no practical relevance. The Court is therefore satisfied that judgment be granted in favour of the Plaintiff for the sum claimed.”

5.6 Criminal Assets Bureau –v- Callaghan and Others

The Bureau had obtained judgment, relating to tax due, in the sum of €1.3 million against Anthony Callaghan Junior, who was serving a sentence for drug trafficking. Proceedings were issued seeking that this tax judgment be “well charged” as against two properties, one held jointly with his former partner and the second registered in the name of Anthony Callaghan. While the Bureau settled the issue in relation to the first property, Anthony Callaghan’s father, also Anthony Callaghan, claimed the second house was his. There was evidence pointing to the Bureau’s contention that the property was the son’s, bought by the father on his behalf. It was noted in particular that some of the son’s funds had intermingled with the father’s in the course of the purchase of the property. The Court felt that, as this was not an application pursuant to the Proceeds of Crime Act, any presumptions or acknowledgements of belief evidence would not apply. Accordingly, the ordinary rules of evidence and precedents which apply to the collection of debt in Court, apply in this case also. The Court concluded the onus was on the Bureau, an onus it had not discharged. While the Bureau concedes and acknowledges this point as to the law, it still feels that there was sufficient evidence before the Court to make the declaration sought, and accordingly has appealed the judgment to the Supreme Court.

OTHER ISSUES

5.7 ASSET RECOVERY OFFICES

Asset Recovery Offices have now been established within twenty-two (22) of twenty-seven (27) Member States pursuant to the framework decision 2007/845/JHA. The Criminal Assets Bureau is designated the ARO for Ireland.

It was noted that a particular barrier towards effective co-operation between Ireland and AROs from other jurisdictions was their concern that the information that might be provided by them on request, would be used in the course of a civil/non-conviction based forfeiture remedy within the State. Many jurisdictions still feel that such a remedy would be unconstitutional within their own jurisdiction and furthermore would be in breach of the United Nations Convention on Human Rights and fundamental freedoms. In order to allay such fears, promote co-operation with Ireland and undermine prejudices as against the remedy, the Bureau, at the request of and in conjunction with the European Commission, presented a paper (delivered by the Bureau Legal Officer) as to how the remedy had been analysed by the Supreme Court, why that Court concluded the legislative remedy to be consistent with the Irish Constitution and why the Bureau consequently felt that it complies with the dictates of the Convention.

CHAPTER 6

6 INTERNATIONAL DEVELOPMENTS

- 6.1 *The Bureau participated in a number of parallel international investigations during the year.*
- 6.2 *During the course of 2009 the Bureau received delegations and working groups from the following countries: Australia, Serbia, The Seychelles, Sweden and the United Kingdom, including Northern Ireland.*
- 6.3 *Bureau Officers also attended and made presentations at a number of international conferences which included Kazakhstan, Luxemburg, Portugal, Romania, Slovakia, Slovenia, The Seychelles and the United Kingdom.*
- 6.4 *Following the 2007 E.U. Council Framework Decision that Asset Recovery Offices (AROs) be established in all Member States, the Criminal Assets Bureau was appointed as the designated ARO for Ireland. Its function in this regard is to deal with all the requests for information and cooperation regarding the identification and seizure of assets linked to criminal conduct. In 2009 the Bureau continued to be the designated ARO dealing with all enquiries received from within the EU. The Bureau also attended ARO Platform meetings held in Brussels.*

6.5 *The Europol Financial Crimes and Property Unit (EFCPU) has been assisting a number of member states by providing expert knowledge in continuing their role in establishing their ARO. The Criminal Assets Bureau along with representatives from the Netherlands and Belgium were invited by Europol to provide this expert knowledge. During 2009 the Bureau participated in these expert missions to Portugal, Romania and Slovenia.*

6.6 *During 2009 the Criminal Assets Bureau together with representatives from the Department of Justice and Law Reform and the Department of Foreign Affairs, participated in the United Nations Open-Ended Intergovernmental Working Group on Asset Recovery targeting the proceeds of corruption. This Working Group Conference was held in Doha in November 2009.*

6.7 *The Bureau continues to be involved with and support the Camden Assets Recovery Inter-agency Network (CARIN). The Annual Conference was held in September 2009 in Washington. The conference focused on promoting the creation of National Asset Recovery Offices and improving the management of seized and confiscated assets. The Conference addressed a number of relevant issues, including the following:*

- Access to Bank Registers/Databases
- Temporary Freezing and Seizure Action
- Enforcement of Freezing, Seizure, Forfeiture and Confiscation Orders
- Effective information Exchange through a Secure Channel
- Jurisprudence Manual
- Investigative Techniques

- Mutual Legal Assistance Treaty (MLAT) Writing
- International and National Standards and Procedures
- General CARIN Practice

CO-OPERATION WITH THE AUTHORITIES IN THE UNITED KINGDOM

6.8 *In 2009 the Bureau continued to work in close cooperation with Her Majesty's Revenue and Customs (HRMC), the Police Service of Northern Ireland (PSNI) and the Serious Organised Crime Agency (SOCA) in the Cross-Border Fuel Enforcement Group which was established in 2008 by the Northern Ireland Office under the auspices of the Organised Crime Task Force, specifically to target the criminal gangs involved in fuel smuggling along the Border.*

This group regularly meets to discuss the issues surrounding the smuggling and laundering of hydrocarbon oils. The group continues to identify suitable targets for cross border multi-agency action. We believe that this multi-agency approach is an excellent example of cross border co-operation and will continue to show improved results during 2010 and beyond.

6.9 *The members of the Bureau Analysis Unit, along with senior Garda Management of the Criminal Assets Bureau, attended the Forensic Analysts Workshop in Dunboyne Castle Hotel on the 4th and 5th March, 2009. The workshop was also attended by representatives from the Garda Analysis Service, the PSNI Analysis Centre, the PSNI Economic Crime Bureau and SOCA. The continuing theme of the cross-border workshops is to foster closer working relationships and to identify and develop best practices in tracking criminal finances and crime analysis.*

6.10 *During 2009 the Bureau continued to work in close co-operation with the Serious Organised Crime Agency (SOCA) in the United Kingdom. In October 2009 the Chief Bureau Officer met with the Deputy Director of Proceeds of Crime Department of SOCA, Mr Ian Cluxton. In addition to this the Bureau also met with SOCA staff from Belfast and the United Kingdom on a number of occasions during the course of the year to discuss matters of a mutual interest and have established a protocol for regular meetings to facilitate effective cross-border co-operation in targeting the profits of crime*

6.11 *The Bureau also attended the Organised Crime Cross-Border Co-operation Seminar held in Dundalk, County Louth, the purpose of which was to identify new crime trends and to agree on areas of co-operation between the law enforcement authorities on both sides of the Border. One area highlighted for attention related to the targeting of persons suspected of being involved in cross-border cigarette smuggling.*

Chapter 7

7 CONCLUSION

- 7.1 *In 2009 the Criminal Assets Bureau has again demonstrated the effectiveness of the multi-agency, multi-disciplinary and partnership approach in targeting the proceeds of criminal conduct. During 2009 the Bureau continued to pursue its statutory remit by carrying out investigations into suspected proceeds of criminal conduct and applying the proceeds of crime, revenue and social welfare legislation.*
- 7.2 *The Bureau continues to work with international crime investigation agencies, successfully targeting proceeds of foreign criminality or criminal proceeds which have migrated abroad, and continues to develop its relationships with Interpol, Europol and CARIN. The Bureau also continues to be the designated Assets Recovery Office in Ireland. The Bureau has represented Ireland at the platform of the Assets Recovery Offices in Brussels. Through these contacts it has noted a concern in the recognition of orders from countries which utilise a “non-conviction based forfeiture regime”. In order to allay some of those concerns, the Bureau, in conjunction with SOCA, delivered a presentation consisting of a comparative analysis between the Supreme Courts’ conclusion that the Proceeds of Crime Act was constitutional and the rights which would accrue under the United Nations Convention on Human Rights and Fundamental Freedoms. The Bureau continues to adopt a long term strategy in supporting European administrative bodies, in particular the European Commission, in persuading member states, where they do not wish to adopt non-conviction based forfeiture regimes themselves, to at least acknowledge the legitimacy within the Human Rights context of such orders, and*

therefore recognise such orders or requests for information based on investigations conducted under that regime.

- 7.3 *The approach taken by the Bureau in relation to cases being heard otherwise than in public should be noted. It is the Bureau's view that as it is a State agency, financed by the public purse, its activities in Court should be conducted in public except in those exceptional circumstances where there is a real risk that to do so would constitute a denial of justice. The Bureau draws a comparison with the criminal trial process and notes that its public nature not only engenders public confidence in the process but also acts as a deterrent.*
- 7.4 *Following reports submitted by the Bureau, both to the Attorney General and the Minister for Justice and Law Reform, relating to the effective implementation of all relevant legislation, the Minister has established a committee within his Department to analyse this subject to determine whether statutory amendments are necessary and, if so, prepare draft heads for a Bill to be considered by the Attorney General.*
- 7.5 *Due to the significant increase in the number of receiverships undertaken by the Bureau, the need for a review of the procedures was identified, an issue expressed in the last Annual Report. An internal review of all current receiverships was conducted by a Forensic Accountant within the Bureau. Thereafter, the services of an external accountant were employed to review the process and make recommendations. Many of the recommendations made in the report have already been implemented.*
- 7.6 *Notwithstanding the downturn in the economy and the fact that the value of criminal assets in the State has also reduced, the Bureau continues to proactively pursue its statutory objective to deny and deprive criminals of the benefits of their ill-gotten gains.*

- 7.7 *While maintaining a focus on major criminal targets, the Bureau still continues its policy of also targeting lower value assets. You will note the effect of this policy, resulting in less return for a higher number of Orders. It is the Bureau's view that this policy, while not necessarily returning a significant income to the State, does engender public confidence in the criminal justice system as a whole and acts as a deterrent in general. It is for this reason that the Bureau proposes to continue to effect such an approach and deliver active support to local communities.*
- 7.8 *The Bureau maintains continued liaison both with the Director of Public Prosecutions and An Garda Síochána to co-ordinate legal remedies in the pursuit of the proceeds of criminal conduct.*
- 7.9 *The Bureau continues to co-ordinate its own strategy with the Policing Plan and overall strategy of An Garda Síochána. It continues to support the rollout of the Garda Divisional Profiler Programme, providing ongoing lectures, training and expertise and receiving in turn intelligence, information and evidence from said profilers. The Bureau will continue to support and utilise the fruits of this programme. In like manner, the Bureau maintains ongoing liaison with both the Office of the Revenue Commissioners and the Department of Social Protection to ensure its operations are consistent with their overall strategy, practices and guidelines.*
- 7.10 *The Bureau continues to focus on fulfilling its statutory objectives targeting criminal assets from both a national and international perspective and in particular ensuring that it plays its part in the overall fight against crime and supporting communities.*

Appendix 1

OBJECTIVES OF THE BUREAU

Section 4 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005

4.—Subject to the provisions of this Act, the objectives of the Bureau shall be—

- (a) *the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,*
- (b) *the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and*
- (c) *the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).*

FUNCTIONS OF THE BUREAU

Section 5 of the Criminal Assets Bureau Act 1996 as amended by the Proceeds of Crime (Amendment) Act 2005 –

5.—(1) *Without prejudice to the generality of Section 4, the functions of the Bureau, operating through its Bureau Officers, shall be the taking of all necessary actions—*

- (a) *in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or*

seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct,

- (b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,*
- (c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and*
- (d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,*

and such actions include, where appropriate, subject to any international agreement, co-operation with any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

- (a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or*
- (b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.*